

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease WYW-98422.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A petition for class I reinstatement of an oil and gas lease terminated by failure to timely pay rental was properly denied when the lessee sought to justify late payment by showing inefficient handling of his rental payment by the Postal Service; having chosen the means for delivery of payment, the lessee was required to bear the consequence of delayed delivery and irregular handling of the payment envelope by his chosen messenger.

APPEARANCES: Bernard S. White, Washington, D.C., pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Bernard S. White has appealed from a September 16, 1991, decision of the Wyoming State Office, Bureau of Land Management (BLM), that denied his petition for class I reinstatement of Federal oil and gas lease WYW-98422.

The lease, issued November 1, 1983, was for 36.76 acres in sec. 5, T. 42 N., R. 93 W., sixth principal meridian, Hot Springs County, Wyoming. Although payment of annual rental for the lease was due on November 1, 1990, it was not received by BLM until November 5, 1990. The envelope in which the payment was enclosed is postmarked November 2, 1990. On January 11, 1991, finding that the lease terminated by operation of law when the rental was not timely paid, there being no producing well on the property (see 30 U.S.C. § 188(b) (1988); 43 CFR 3108.2-1), BLM notified appellant that he might seek reinstatement of the lease either under provision of 30 U.S.C. § 188(c) (1988) (class I reinstatement), or 30 U.S.C. § 188(d) (1988) (class II reinstatement), or both. Appellant petitioned for class I reinstatement, which was denied.

To justify class I reinstatement of his lease, appellant explained to BLM that he had mailed his rental payment through the U.S. Postal Service on September 21 or 22, 1990, over a month before the November 1, 1990, due date. When he discovered that the Postal Service had failed to deliver several other payments he had mailed during the same 2-day period, he inquired

at the post office. Thereafter the delayed mailings, including the lease payment at issue, were delivered, albeit the lease rental check was not received by BLM until November 5, 1990. Appellant argued that this lengthy and unforeseeable delay was so extraordinary as to justify reinstatement of his lease. Commenting that BLM apparently considered the U.S. Postal Service to be his agent for delivery of payment, appellant argued that his early mailing nonetheless established that he had exercised due diligence within the meaning of section 188(c) when making his rental payment. BLM, however, rejected his argument; citing Leo M. Krenzler, 82 IBLA 205 (1984) and three other decisions by the Interior Board of Land Appeals dealing generally with reinstatement of oil and gas leases, BLM determined that appellant had failed to establish entitlement to class I reinstatement of his lease under section 188(c).

The arguments made to BLM are repeated on appeal to this Board, where appellant also contends that the decisions relied upon by BLM do not support the decision to reject his petition for reinstatement, but simply evade issues he raised; he contends they are factually dissimilar to his case and lack relevance to this appeal. Arguing that he was not guilty of lack of due diligence, given his early mailing of the rental check, appellant has offered a letter dated October 15, 1990, from the office of the inspector in charge at the Washington, D.C. Postal Service, that supports his statement concerning the mailing delays he experienced at that location. He contends that irregular handling of his payment by the Postal Service justifies reinstatement of his lease.

[1] The requirement imposed by section 188(c) that a lessee seeking class I reinstatement show his late payment was either "justifiable or not due to a lack of reasonable diligence" (as implemented by Departmental regulation 43 CFR 3108.2-2), has been interpreted narrowly, as appellant points out. Although the rule was liberalized in 1988 so that reasonable diligence can now be established by production of a postmark showing mailing of payment on or before the due date, the benefit of the amended rule is not available to appellant here, because the postmark on his payment envelope shows it was marked the day after the date payment was due. See 53 FR 17343, 17348, 17357 (May 16, 1988); Karl Mladinich, 120 IBLA 391, 393 (1991). In cases where there has been irregular delivery by the Postal Service, the Board has treated a failure to make timely delivery by the Postal Service as though it were the act of the lessee using the Service. See Petro-Hunt Corp., 124 IBLA 318, 320 (1992), and cases cited. Irregular handling by the Postal Service is therefore imputed to the lessee who chose that means whereby to deliver his payment. Id. at 124 IBLA 321. It has long been established that one who sends a communication to the Department through the Postal Service bears the risk that it may not be delivered on time. See James B. Pauley, 53 IBLA 1, 4 (1981) and cases cited.

The oil and gas lease rental payment that was due on November 1, 1990, but was postmarked November 2, 1990, and received by BLM on November 5, 1990, was therefore not timely received and lease WYW-98422 was terminated by operation of law. See 30 U.S.C. § 188(b) (1988); 43 CFR 3108.2-1, 3108.2-2. On the facts shown in this case, reinstatement of the lease so

terminated cannot be justified by a showing that the Postal Service failed to handle the payment as efficiently as appellant had hoped. Petro-Hunt Corp. at 124 IBLA 321. Consistent with prior practice in reinstatement cases, BLM therefore correctly denied class I reinstatement of appellant's lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

R. W. Mullen
Administrative Judge